

REMARKS

This responds to the Office Action dated June 26, 2006.

Claim 5 is amended, no claims are canceled, and claims 11-20 are added. Thus, claims 1-20 are now pending in this application. Claim 5 has been amended to correct typographical errors. Applicant respectfully submits that no new matter was added in making this amendment to claim 5.

New Claims

Applicant has amended the application to add claims 11-20, such that 3 independent claims and 20 total claims are now pending in this application. Applicant respectfully submits that no new matter was added in making this amendment.

§102 Rejection of the Claims

Claims 1-4 and 6-10 were rejected under 35 U.S.C. § 102(b) as being anticipated by Robarts et al. (U.S. 2002/083025A1, "Robarts"). Applicant respectfully traverses the rejection.

With respect to independent claim 1, Applicant is unable to find in the cited portions of Robarts, among other things, a system including a cardiac device module having a runtime neural network module, and an artificial neural network processing module having a cardiac neural network training module for processing collected patient data to determine a set of operating coefficients, where the cardiac device runtime neural network module and the neural network training module implement identical networks of nodes, as recited in the claim.

Applicant is unable to find in the cited portions of Robarts a showing or suggestion that operating coefficients are used or determined. Likewise, applicant is unable to find a neural network module or a neural network training module, much less two such modules implementing identical networks of nodes.

Additionally, Applicant traverses the assertion in the Office Action that a cardiac neural network training module "is inherently capable of determining a set of operating coefficients..." (Office Action, bottom of page 2 through top of page 3). Applicant also traverses the assertion in the Office Action that "a cardiac device... would inherently possess an interface module of some sort for receiving collected patient data..." (Office Action, page 3, lines 3-4). Applicant

respectfully submits that the Examiner has not provided a prima facie case for inherency, and thus the Robarts reference fails to show or suggest the claimed subject matter. “To serve as an anticipating when the reference is silent about the asserted inherent characteristic, such gap in the reference may be filled with recourse to extrinsic evidence. Such evidence must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill.” *Continental Can Co. v. Monsanto Co.*, 948 F.2d 1264, 1268 (Fed. Cir. 1991). “This modest flexibility in the rule that ‘anticipation’ requires that every element of the claims appear in a single reference accommodates situations where the common knowledge of technologists is not recorded in the reference; that is, where technological facts are known to those in the field of the invention, albeit not known to judges.” *Id.* at 1269. “[The inherent disclosure] must be necessarily present and a person of ordinary skill in the art would recognize its presence.” *Crown Operations Intl. v. Solutia, Inc.*, 289 F.3d 1367, 1377 (Fed. Cir. 2002). Applicant respectfully submits that the rejection has not provided such extrinsic evidence, nor has the rejection provided a convincing line of reasoning that the asserted inherency in the Robarts reference would be so recognized by persons of ordinary skill.

Claims 2-4 and 6-10 depend, either directly or indirectly, on independent claim 1, and are believed to be patentable at least for the reasons provided with respect to claim 1. Applicant respectfully requests withdrawal of the rejection, and reconsideration and allowance of claims 1-4 and 6-10.

Allowable Subject Matter

Claim 5 was objected to as being dependent upon a rejected base claim, but was indicated to be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Applicant has amended claim 5 to correct typographical errors. Applicant respectfully asserts that the base claim (claim 1) for claim 5 is in condition for allowance, and hence claim 5 is in condition for allowance. Applicant respectfully requests reconsideration and allowance of amended claim 5.

CONCLUSION

Applicant respectfully submits that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney at (612) 373-6960 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

CARLOS RICCI ET AL.

By their Representatives,

SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A.
P.O. Box 2938
Minneapolis, MN 55402
(612) 373-6960

Date 9-21-06

By Marvin L. Beekman
Marvin L. Beekman
Reg. No. 38,377

CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being filed using the USPTO's electronic filing system EFS-Web, and is addressed to: Mail Stop Amendment, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 21 day of September 2006.

Name

Signature